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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,581	02/23/2004	James Kenneth McAlpine	MCAJ101CIP	9934

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EXAMINER

NICHOLSON, ERIC K

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/785,581

Applicant(s)

MCALPINE, JAMES KENNETH

Examiner

Eric K Nicholson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### **Specification Objections**

The disclosure is objected to because of the following informalities: On page 9, line 3, “may be bent through up to 15 □” is not understood. It appears that for proper basis for claim 4 that “□” be changed to “degrees”. Appropriate correction is required.

### **Claim Rejections –35 USC § 112**

Claim 5 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, “said selected angle” lacks proper antecedent basis, it appears that claim 5 should depend from claim 3 which does call for a selected angle and for treatment on the merits claim 5 will be considered to depend from claim 3.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 5,749,609 to Steele. As to independent claims 1, 14 and 15 The Steele device discloses in fig. 4 flexible piping 10 having first 11 and second 12 ends connected to a first pipe section 50 and a second pipe section 51, respectively. The flexible piping 10 includes a smooth bore (fig. 4, column 1, lines 15-20, column 4, lines 25-30 and column 4, lines 40-45) so that flow of all materials passes unimpeded. It is noted that the Steele device is not stated to be used as a connection for between a bath drain and a bath overflow however such recitation is considered to be merely a matter of intended use in which the introductory phrase or preamble of the claim does not state a limitation in the claim which distinguishes it over the prior art and further it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As to claim 2, the two rigid flanking members can either be considered as the members 13a and 14a or the flange members 50 and 51 shown in fig. 4.

As to claims 3-5, the connector is inherently prevented from curvature above a selected angle based on many factors such as length of the flexible member, material of the flexible member, thickness of the flexible member, width of beads 16b or grooves 15a of which beads 16b will contact each other during bending and prevent further curvature. As shown in fig. 4 the connector bends within the range prescribed in claim 4 and clearly could be bent less or more such that members 50 and 51 interfere such as stated in claim 5 all depending on construction factors noted above all of which appear inherent in the fabrication of the flexible connector and as such do not patentably define over the prior art.

As to claims 6 and 13, see column 3, lines 35-45 which indicate the flexible member is made of elastomeric material.

As to claims 7-12 see the depressions, weak areas or predefined flexion locations 15a and beads or ridges 16b in fig. 1.

## Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the flexible overflow pipe 8 of Japanese patent 55-11-60 and also pipe 8 of French patent 2626594. See also the flexible smooth bore drain pipes of U.S. patents 3,313,314 to Burke et al; 5,063,616 to Bresnahan and 4,516,278 to Lamond.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Nicholson whose telephone number is (703) 308-0829. The examiner can normally be reached on Tuesdays thru Fridays from 7:30 to 6:00.

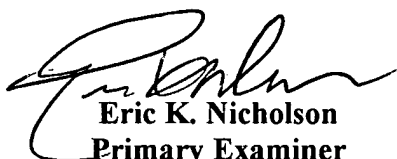
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for Technology Center 3600 is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-1113.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

ekn  
W@H  
8/31/2004

  
**Eric K. Nicholson**  
**Primary Examiner**  
**Technology Center 3600**